



The Competitive Carriers Association

Rural Cellular Association

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September 30, 2011

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: CC Docket No. 01-92
WC Docket No. 10-90
WC Docket No. 07-135
WC Docket No. 05-337
GN Docket No. 09-51**

Dear Ms. Dortch:

On September 28, 2011, Steven K. Berry, President and CEO of RCA; Tim Donovan, VP of Legislative Affairs of RCA; In-Sung Yoo, Assistant Regulatory Counsel of RCA; and I met with Christine Kurth, Policy Director & Wireline Counsel to Commissioner McDowell, to discuss the current state of universal service reform. Specifically, RCA highlighted the lack of clarity regarding the transition from current competitive eligible telecommunications carriers (CETC) high-cost funding to a new Mobility Fund and the negative effect it will have on competitive wireless carriers.

As RCA's most immediate concern, RCA discussed how uncertainty surrounding transition to a standalone Mobility Fund has delayed existing deployment plans and threatens to put future broadband investment on hold. RCA continues to push for a sufficient amount of support, use of a cost model with success-based portability¹ and opposes the use of reverse auctions in a reformed universal service fund (USF).² But in the near-term, the business concerns of RCA's carrier members also require immediate focus on the potential phase down of current high-cost support. The insufficient level of funding allocated to the Mobility Fund is a major concern, but the specter of high-cost support drawdown without a delineated replacement mechanism compounds that uncertainty, a crucial issue for carriers with financial commitments of 10 or more years. RCA

¹ Letter of Steven K. Berry, President & CEO, RCA, and Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (Aug. 3, 2011) at 5–8 [hereinafter *ABC Plan Letter*].

² *In re* Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime, *Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337; GN Docket No. 09-51; CC Docket No.01-92 (Apr. 18, 2011) at 5–6, 9, 17–19 [hereinafter *CAF NPRM Comments*]; *In re* Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime, *Reply Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337; GN Docket No. 09-51; CC Docket No.01-92 (May 23, 2011) at 10–16 [hereinafter *CAF NPRM Reply*].

described how this uncertainty has and will continue to harm wireless carriers and the consumers they serve.

The potential withdrawal of high-cost support has already affected established build-out plans. Decommissioning cell sites would affect consumers, local business and public safety.³ And once shut down, there is no guarantee that subsequent funding would revive those sites. RCA urged the FCC to allow current CETCs receiving USF support the opportunity to determine whether they will have access to USF under the FCC's new mechanism to avoid stranded investment. The Commission must ensure sufficient funding for wireless CETCs and delay phase down of support until replacement funding has been established and implemented.⁴ A well-reasoned and rational glide path to high-cost mobile broadband funding must adhere to principles of competitive and technological neutrality and ensure vital services are not affected during this transitional phase.

RCA reiterated that even as diverse industry segments debate over the merits of various technologies and approaches to USF reform, consumers have already made their choice clear and that choice is wireless.⁵ RCA discussed a recent study that showed by 2015, more U.S. Internet users will use mobile devices to access the Internet than those that use PCs or other wireline devices.⁶ The ever-increasing preference for wireless has not been lost on wireline carriers either. An NTCA report found that 63 percent of survey respondents indicated that they hold at least one wireless license below 2.3 GHz.⁷ Of those respondents that did not currently offer wireless services, 45 percent indicated they were currently contemplating doing so.⁸ At a recent FCC meeting, one RCA member offering both wireline and wireless services indicated that it was losing on average 5 percent of its wireline customers each year and that these customers were opting for wireless services.⁹ The possibility of wireline companies using high-cost funds distributed on a wire center basis to build out *wireless* networks while wireless carriers are denied sufficient access to funding highlights the technologically-biased nature of certain reform proposals. As consumers continue to abandon wireline technology in favor of wireless, wireless and satellite backhaul options are rapidly improving, further reducing dependence on incumbent local exchange carriers for traditional backhaul support. In fact, the FCC recently acted to support wireless backhaul as a means to promote access to "adequate and cost-efficient backhaul,"¹⁰ and wireless carriers increasingly turn to

³ *In re* Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Inter-carrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, *Comments of MTPCS, LLC d/b/a Cellular One*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Aug. 24, 2011) at 28.

⁴ See *CAF NPRM Comments* at 20-21; *CAF NPRM Reply* at 5.

⁵ Local Telephone Competition Report at 24 (Mar. 11, 2011).

⁶ Press Release, IDC, IDC: More Mobile Internet Users Than Wireline Users in the U.S. by 2015 (Sept. 12, 2011), <http://www.idc.com/getdoc.jsp?containerId=prUS23028711>.

⁷ NTCA 2011 Wireless Survey Report at 3.

⁸ *Id.*

⁹ Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (July 28, 2011) at 2.

¹⁰ *In re* Amendment of Part 101 of the Commission's Rules to Facilitate the Use of Microwave for Wireless Backhaul and Other Uses and to Provide Additional Flexibility to Broadcast Auxiliary Service and Operational Fixed Microwave Licensees; Petition for Rulemaking filed by Fixed Wireless Communications Coalition to Amend Part 101 of the Commission's Rules to Authorize 60 and 80 MHz Channels in Certain Bands for Broadband Communications, Report and Order, *Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, WT Docket No. 10-153, RM-1160, at 3 (Aug. 9, 2011).

competitive backhaul providers. These market realities must factor into the Commission's eventual reform decisions.

RCA also expressed our staunch opposition to a Right of First Refusal (RoFR) for wireline carriers as it is wildly anti-competitive and completely unjustified.¹¹ A RoFR ignores the realities of the market and picks winners and losers with nothing to justify such favoritism. This technologically-biased policy ignores the efficiencies and cost-effectiveness that wireless services offer, has no basis in the Telecommunications Act and cuts the consumer out of the equation.¹² A RoFR entrenches a government-sanctioned monopoly provider and is nothing more than a wireline attempt to preclude competition.

RCA also discussed its ongoing concern with the proposed \$300 million allocation for a wireless fund.¹³ RCA has advocated that \$1.5 billion—half of what the wireless industry currently contributes—would be an equitable allocation,¹⁴ but that it could support an \$800 million Mobility Fund if the FCC also allocates a sufficient amount for annual operating expenses and if the largest wireless carriers and RLECs are prohibited from participating.¹⁵ In addition to the amount of the Mobility Fund, RCA expressed its opposition to the use of anticompetitive reverse auctions¹⁶ and its support for a forward-looking cost model, coupled with portability. This approach will allow the FCC to competitively base support on the costs an efficient carrier would incur in providing broadband service for an area.

If, however, the FCC decides to use reverse auctions to distribute USF, despite the harms that will result, RCA has been asked to develop a list of proposed conditions that would accompany USF support. RCA has long supported tying awards of high-cost support to public interest obligations

¹¹ *ABC Plan Letter* at 3–4; *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Aug. 24, 2011) at 14–17 [hereinafter *ABC Plan Comments*]; *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, Reply Comments of RCA – The Competitive Carriers Association*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Sept. 6, 2011) at 3, 6, 10–11 [hereinafter *ABC Plan Reply*]; Letter of Steven K. Berry, President & CEO, RCA – The Competitive Carriers Association; Keven K. Lippert, Vice President & General Counsel, ViaSat, Inc.; Jeffrey H. Blum, Senior Vice-President & Deputy General Counsel, DISH Network L.L.C., EchoStar Technologies L.L.C.; Lisa R. Scalpone, Vice President & General Counsel, WildBlue Communications, Inc.; Dean A. Manson, Senior Vice President, General Counsel & Secretary, Hughes Network Systems, LLC, to Julius Genachowski, Chairman, FCC, et al. (Sept. 20, 2011) at 1.

¹² *Id.*

¹³ *In re Universal Service Reform Mobility Fund, Comments of Rural Cellular Association*, WT Docket No. 10-208 (Dec. 16, 2010) at 9–11; *In re Universal Service Reform Mobility Fund, Reply Comments of Rural Cellular Association*, WT Docket No. 10-208 (Jan. 18, 2011) at 4–5.

¹⁴ *ABC Plan Comments* at 13–14; *ABC Plan Reply* at 8.

¹⁵ Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 et al. (Sept. 27, 2011) at 2.

¹⁶ See *CAF NPRM Comments* at 5–6, 9, 17–19; *CAF NPRM Reply* at 10–16; *In re Mobility Fund; Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support, Comments of Cellular South, Inc.; NE Colorado Cellular, Inc. d/b/a Viaero Wireless; Rural Cellular Association; Westlink Communications, LLC*, WT Docket No. 10-208; WC Docket Nos. 10-90, 05-337; GN Docket No. 09-51 (Dec. 16, 2010) at 4–23.

within the carrier's control, and RCA's members are willing and able to meet reasonable public interest obligations that the Commission may choose to adopt as conditions of USF support.¹⁷ RCA agrees that all broadband connectivity support should also be subject to specified public interest obligations, including open access, interconnection, data roaming and strict build-out requirements that take into account market realities.¹⁸

RCA also discussed the intercarrier compensation (ICC) portion of the ABC Plan. RCA has supported a transition to a low, uniform rate or bill-and-keep. However, the ABC Plan supporters are under the false impression that savings as a result of ICC reform would offset the loss of USF support. While the potential transition to a uniform rate or a bill-and-keep system could result in cost savings for wireless carriers, RCA described how the savings would in no way balance out the loss of high-cost support. RCA noted that these ICC reforms would reduce their costs as little as 1 percent.¹⁹ Thus, these ICC-related savings would be dwarfed by the dramatic reductions in high-cost support that rural wireless carriers would experience under the ABC Plan.

In conclusion, RCA strongly urges that the FCC bring some level of near-term certainty to USF reform in order to allow wireless carriers to properly forecast their financial commitments and ensure continued service to their customers and the public at large. As the FCC continues to piece together the components of a reformed high-cost fund, it must at the same time establish distribution of new wireless broadband support before phasing down current CETC support. Failure to do so would exacerbate an already difficult situation for wireless carriers and leave rural consumers unserved.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

Sincerely,

/s/

Rebecca M. Thompson
General Counsel

cc: Christine Kurth

¹⁷ Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (Sept. 27, 2011) at 2.

¹⁸ *Id.*

¹⁹ Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (July 28, 2011) at 2.